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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b))
FM Table of Allotments,)
For FM Broadcast Stations.)
)
(Russellville and Littleville, Alabama))

MB Docket No. 04-12
RM-10834

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APR 28 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Secretary, to forward to Assistant Chief (Allocations), Audio Division

OPPOSITION TO PETITION FOR RECONSIDERATION

Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), the licensee of WMXV(FM), Channel 278A, Russellville, Alabama (Facility ID No. 14928), by its attorneys, and pursuant to Section 1.106(g) of the Commission's Rules, hereby opposes the Petition for Reconsideration dated April 14, 2004, submitted by counsel for Mike Self (the "Petition for Reconsideration"), whereby Mr. Self seeks the reconsideration or rescission of the *Report and Order*, DA 04-972 (MB rel. April 14, 2004) in the above-captioned proceeding (the "*Report and Order*"). 1/ The *Report and Order*, finding that FM Allotment priority three would be advanced by providing Littleville with its first local service, adopted the proposal to modify the Commission's Table of Allotments for FM Broadcast Stations to reallocate Channel 278A from

1/ The *Report and Order* adopted the proposal set forth in Clear Channel's Petition for Rulemaking dated September 24, 2003 (the "Petition for Rulemaking") (which such Petition for Rulemaking is incorporated by reference herein) and in the Bureau's *Notice of Proposed Rule Making*, 19 FCC Rcd 898 (MB 2004) (the "Notice").

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Russellville, Alabama, to Littleville, Alabama, and to conditionally modify the license of WMXV(FM) to specify operations on Channel 278A at Littleville, Alabama.

In his Petition for Reconsideration, Mr. Self asserts that the Bureau must reconsider or rescind the *Report and Order* because the Bureau purportedly failed to consider his Comments. 2/ While the *Report and Order* stated that Mr. Self's Comments were untimely, nevertheless, the Bureau did address, in both the *Notice* and the *Report and Order*, the central arguments of Mr. Self's Comments – namely, whether Littleville is deserving of a first local service preference and whether Russellville would be unduly deprived of service by the reallocation of WMXV(FM). 3/ Thus, even if Mr. Self's Comments indeed were timely filed, because the Bureau considered the matters raised in his Comments in its determination, this proceeding need not be reopened for further deliberation.

For the first time in his Petition for Reconsideration, and without explaining why he could not have raised the issue earlier, 4/ Mr. Self asserts that the Bureau should have

2/ Mr. Self's Comments, which were prepared *pro se*, were entered into the Commission's Electronic Comment Filing System as having been received on March 17, 2004. In his Petition for Reconsideration, which was prepared by counsel, Mr. Self submits a copy of his comments as delivered by counsel and date-stamped by the FCC on March 12, 2004, the comment deadline.

3/ In his Comments, Mr. Self, who had failed to identify himself as the landlord of WMXV(FM)'s tower, also surmised that WMXV(FM) would be relocated to another tower site. As noted by Clear Channel in its Reply Comments, it is not the Commission's role to preserve the monthly payments of landlords under their lease agreements. The *Notice* in this proceeding provided that "[s]hould an alternate site be selected for the allotment of channel 278A at Littleville, Clear Channel will be required to provide a gain and loss study." See Notice at ¶ 4. While the *Report and Order* did not reiterate this requirement, the Bureau retains the discretion to request such a submission in connection with its consideration of any such modification application.

4/ Mr. Self did not file Reply Comments in this proceeding.

undertaken a *Faye and Richard Tuck* analysis 5/ because allegedly, “[w]ith an appropriate site move, WMXV(FM)’s 70 dBu contour could encompass a substantial portion, if not all of the Florence Urbanized Area.” 6/

Pursuant to the cases cited by the Bureau in the *Report and Order*, given that Littleville is not located within an urbanized area and given that WMXV(FM), while serving Littleville, would provide 70 dBu service to only 18 percent of the Florence Urbanized Area, the Bureau clearly was correct in not requiring a *Tuck* showing. In any event, the record before the Commission which establishes that Littleville is a community deserving of a first local transmission service also is responsive to the *Tuck* factors. Out of an abundance of caution, the *Tuck* factors are reviewed here.

In a *Tuck* analysis, the Commission considers three criteria: (1) the signal population coverage, (2) the size and proximity of the proposed community to the central city of the urbanized area, and (3) the interdependence of the proposed community to the urbanized area. 7/ The interdependence factor is the most important criterion considered in making an allotment decision involving the proposed reallocation of a station to an urbanized area. 8/ In *Tuck*, the Commission set forth eight factors in assessing the interdependence of a specified

5/ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) (“*Tuck*”).

6/ See Petition for Reconsideration at 3-4. The Petition for Reconsideration alternatively requests, at a minimum, the imposition of the condition that a gain/loss study be submitted with any site relocation application. *Id.* at 4.

7/ See, e.g. *Saluda and Irmo, South Carolina*, DA 04-137 at ¶ 3 (MB rel. Jan. 30, 2004).

8/ *Id.* at ¶ 3.

community. 9/ The Commission has considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. 10/

Regarding the first two criteria, even assuming *arguendo* that WMXV(FM) could place a 70 dBu contour over “a substantial portion, if not all of the Florence Urbanized Area,” Littleville is not proximate or contiguous to that Urbanized Area. There are intervening rural areas and other communities between Littleville and the Florence Urbanized Area, 11/ and the drive from Littleville to central Florence exceeds 15 miles. 12/ The population of Littleville

9/ The eight independence factors are: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own weekly newspaper or other media that cover the community’s local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facility and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. *Tuck*, 3 FCC Rcd at 5378.

10/ See *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (MMB 1996).

11/ See Attachment A hereto (U.S. Census Bureau and MapQuest maps).

12/ The MapQuest program calculates the driving distance between Littleville and Florence as 15.56 miles. See <http://www.mapquest.com/directions/main>. Moreover, the driving distances between Littleville and other municipalities in the Florence Urbanized Area are, respectively: Littleville/Tuscumbia (11.92 miles), Littleville/Muscle Shoals (11.51 miles), Littleville/Sheffield (14.46 miles) *Id.* See also *Saluda and Irmo, South Carolina* at ¶ 3 (independent community is located about 10 miles from central community); *Ashland, Coaling, Cordova, Decatur, Dora, Hackleburg, Hobson City, Holly Pond, Killen, Midfield, Scottsboro, Sylacauga, and Tuscaloosa, Alabama, Atlanta, Georgia, and Pulaski, Tennessee*, DA 04-1026 at ¶ 7 (MB rel. Apr. 19, 2004) (Midfield is an incorporated community located nine miles from Birmingham with an elected mayor and city council).

(978) is 2.7 percent of the population of Florence (36,264), the central city of the Urbanized Area, which is well within the comparative range of communities passing the *Tuck* analysis. ^{13/}

Turning to the first of the eight independence factors, there are no precise statistics as to the extent to which Littleville residents work in the larger metropolitan area; however, the 2000 Census profile indicates that three percent of Littleville workers walk to work or work at home. ^{14/} Moreover, as set forth in the Petition for Rulemaking, there are a multitude of businesses in Littleville, as well as an industrial park in development, providing employment opportunities for the residents of Littleville. ^{15/}

As to independence factor two – whether the smaller community has its own weekly newspaper or other media that cover the community’s local needs and interests – the mayor of Littleville distributes in Littleville a newsletter on a quarterly basis addressing the needs and interests of the community. Also, Internet services, such as the North Alabama Net, ^{16/} provide communications services and advertising opportunities directed to the residents of Littleville.

Factor three – whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area – is clearly demonstrated by the decision of Littleville’s community leaders and residents to incorporate the

^{13/} See, e.g., *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996) (independent community had less than one percent of the central city’s population).

^{14/} See Petition for Rulemaking at Exhibit 1 (U.S. Census Bureau, Census 2000).

^{15/} See *id.* at Exhibits 3 (Littleville Industrial Park) and 4 (Town of Littleville Businesses).

^{16/} See <http://www.northalabama.net/>; see also <http://alabama.city-centers.com/Littleville-Alabama/>.

town over 48 years ago, and in the sense of community evidenced in the History of Littleville provided by the Town leaders. 17/

Littleville also clearly qualifies under factor four – whether the specified community has its own local government and elected officials. Littleville has been incorporated since 1956, and is recognized as a town by the U.S. Census Bureau. 18/ Littleville has both elected and appointed officers – the Littleville mayor and five-person town council are elected to four year terms, and the town of Littleville employs a City Clerk, a Court Clerk and a Police Chief, among other town employees. 19/ The Littleville Town Hall houses the offices of the mayor, City Clerk, Court Clerk and Police Department. A contract postal unit post office is situated in the Littleville Town Hall, and Federal Express and UPS maintain drop-off boxes adjacent to the Town Hall. The Littleville council meets twice a month at the Town Hall, and the Court Clerk holds sessions twice a month at the Town Hall to handle Town of Littleville matters.

As to the fifth factor – whether the smaller community has its own telephone book provided by the local telephone company or zip code – the BellSouth Phone Directory provides a separate listing for governmental services under the Town of Littleville. Efforts are underway for a separate zip code for Littleville, and the residents of Littleville are served by a contract postal unit post office located at the Littleville Town Hall.

17/ See Petition for Rulemaking at Exhibit 2 (History of Littleville); see also *Crisfield, Maryland; Belle Haven, Cape Charles, Exmore, Nassawadox, and Poquoson, Virginia*, DA 03-2980 at ¶ 13 (MB rel. Sept. 29, 2003) (“Poquoson’s leaders and residents view it as a separate, independent community, as evidenced by Poquoson’s decisions in 1952 to leave York County and to become a City in 1975”).

18/ See Petition for Rulemaking at Exhibits 1 and 2.

19/ See *id.* at 3.

Littleville also meets the sixth indicia of independence – whether the community has its own commercial establishments, health facility and transportation systems. Among the operating businesses and local establishments listed by the Town of Littleville are lumber provisioners, storage providers, package stores, a farm center, a music store, a senior citizens center, a general store, a lounge, a bar-b-que establishment, an insurance agency, used car retailers, an upholster, auto repair shops, a video store, a gas station, a country club and a bank, including establishments that list “Littleville” in their business name. 20/

Regarding factor seven – the extent to which the specified community and the central city are part of the same advertising market – Littleville is part of the Florence-Muscle Shoals, Alabama Arbitron market. However, as was the case in the Norfolk Arbitron market in *Crisfield, Maryland et. al*, 21/ there are several municipalities within the Florence-Muscle Shoals Arbitron market. 22/ Like Poquoson, which is a considerable distance from Norfolk and Virginia Beach, Littleville is a considerable distance from the municipalities in the Florence Urbanized area. Also, residents in Littleville can communicate through the mayor’s newsletter and advertisers can reach residents through commercial websites. 23/

Lastly, Littleville also demonstrates its independence under factor eight – the extent to which the specified community relies on the larger metropolitan area for various

20/ See *id.* at Exhibit 4 (Town of Littleville Businesses).

21/ *Crisfield, Maryland; Belle Haven, Cape Charles, Exmore, Nassawadox, and Poquoson, Virginia*, DA 03-2980 at ¶ 16.

22/ The Florence Urbanized Area includes the municipalities of Florence, Muscle Shoals, Sheffield and Tuscumbia.

23/ See *e.g., Saluda and Irmo*, at ¶ 5 (advertising can be directed to residents through commercial websites).

municipal services such as police, fire protection, schools and libraries. The Town of Littleville itself provides many municipal services, including water, sewer, garbage and police services, and has its own Volunteer Fire Department. 24/

In sum, even assuming *arguendo* that the Commission would evaluate Littleville under the *Tuck* criteria, such an analysis confirms the independence of Littleville. Consequently, the Bureau should deny Mr. Self's request to reconsider or rescind the *Report and Order*.

Mr. Self also argues in his Petition for Reconsideration that *Royston and Arcade, Georgia*, 25/ and *Geneseo, Illinois, and DeWitt, Iowa*, 26/ should not be controlling here as to services remaining in Russellville, because he asserts that in this proceeding there is a greater population disparity between the vacated, but still served community, and the new community. Clear Channel had cited to these cases as examples of Commission precedent that even *one* remaining daytime-only local transmission service suffices, while here, Russellville, the current community to which WMXV(FM) is assigned, will continue to be the community of license of *two* such stations – WGOL(AM) and WKAX(AM).

However, by comparing community size, Mr. Self confuses the analysis appropriate for those proposals which further allotment priority three (first local transmission service) with those proposals which only serve allotment priority four (other public interest matters). The Allocations Branch succinctly explained in *Geneseo, Illinois, and DeWitt, Iowa*:

24/ See Petition for Rulemaking at 3.

25/ 16 FCC Rcd 8906 (MMB 2001).

26/ 12 FCC Rcd 19477 (MMB 1997).

“[w]hile comparative community size may be a factor in comparing priority four proposals, here, where priority three is served, the relative populations of the community are not weighed.” 27/

In conclusion, the Bureau’s action in the *Report and Order* reallocating Channel 278A from Russellville to Littleville, Alabama, furthers allotment priority three by authorizing a first local transmission service to a deserving, independent community, Littleville, while Russellville will continue to be served by two local transmission services (allotment priority four). Consequently, the Commission should deny the Petition for Reconsideration filed by Mr. Self.

27/ *Id.* at ¶ 4. Consequently, the Allocations Branch held that “[w]hile under priority four retention of the station at Geneseo would be a first local night-time transmission service, this does not outweigh the fact that the proposed arrangement of allotments triggers a more important allotment priority -- a first local aural transmission service.” *Id. Accord Ravenswood and Elizabeth, West Virginia*, 10 FCC Rcd 3181 (MMB 1995) (reallotment of FM station as a first local transmission service to a community of 900 from a community of 4,189 furthers allotment priority three; former community remains served by a daytime-only AM station). Indeed, if relative numbers were to count, *Ravenswood and Elizabeth* would be nearly precisely on point precedent here, as Littleville, with a population of 978 (as compared to Elizabeth’s 900 population) would receive new local service while Russellville’s 8,971 persons would share two AM daytime services, or the equivalent of one AM service per 4,486 persons (as compared to Ravenswood’s 4,189 persons served by one AM service).

Respectfully submitted,

**CLEAR CHANNEL BROADCASTING
LICENSES, INC.**

By: Marissa G. Repp / AHF
Marissa G. Repp

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, DC 20004-1109
(202) 637-6845

Its Attorneys

April 28, 2004

ATTACHMENT A

(U.S. Census Bureau Map; MapQuest Map)





DECLARATION

I, Jeff Littlejohn, declare as follows:

1. I am Senior Vice President - Engineering of Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), the licensee of Station WMXV(FM), Russellville, Alabama.

2. I have reviewed the foregoing Opposition to Petition for Reconsideration of Clear Channel in MB Docket 04-12, and do hereby declare under penalty of perjury that the facts and statements contained therein are true and correct to the best of my knowledge, understanding and belief.


Jeff Littlejohn

Executed this 28th day of April, 2004.

Certificate of Service

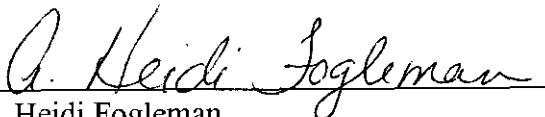
I, A. Heidi Fogleman, hereby certify that on this 28th day of April, 2004, a copy of the foregoing **Opposition to Petition for Reconsideration** was sent by first-class mail, postage prepaid, to:

John A. Karousos, Assistant Chief*
Audio Division, Media Bureau
Federal Communications Commission
445 - 12th Street, S.W.
Room 3-A266
Washington, D.C. 20554

Ms. Kathleen Scheuerle*
Audio Division, Media Bureau
Federal Communications Commission
445 - 12th Street, SW
Room 3-C312
Washington, DC 20554

Mr. Mike Self
522D. Mitchell Self Drive
Muscle Shoals, AL 35662

Frank R. Jazzo, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
Counsel to Mike Self


A. Heidi Fogleman

*By Hand Delivery